

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GILLIAN LAMBEY,

Plaintiff,

vs.

STATE OF NEVADA, *ex rel*, DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Defendant.

Case No. 2:07-cv-01268-RLH-PAL

ORDER

The court conducted a hearing October 6, 2009 and continued the matter for an additional status conference on October 20, 2009 at 11:15 a.m. The Clerk of the Court was directed to personally serve the plaintiff with the court's order that she personally appear. A more detailed written Order (Dkt. #47) was entered October 16, 2009, which related the procedural history of the Motion to Compel Sanctions (Dkt. #35) filed by the defendant, and a series of actions taken by the court to require counsel for plaintiff to appear and respond.

Counsel for plaintiff failed to respond to the initial motion to compel and failed to appear at a hearing scheduled on the motion. Counsel for plaintiff failed to respond to an order to show cause and failed to appear at the hearing set on the order to show cause. The order setting this matter for further proceedings on October 20, 2009 required the plaintiff to appear in person. She appeared as required. Her attorney did not. Ms. Clark called the Clerk of the Court at approximately 7:00 a.m. and left a number at which she could be reached. The number was a different number than the one she provided in an Affidavit (Dkt. #45) filed October 15, 2009. The courtroom deputy made numerous attempts to reach the plaintiff's counsel at both numbers she had provided, both before and during the hearing.

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1 Plaintiff's counsel was not available at either number. One of the numbers went immediately to voice
2 mail. Voice mail messages were left and not returned.

3 The court provided the plaintiff with a courtesy copy of the October 16, 2009 written order and
4 inquired of plaintiff whether she had been in recent communication with her counsel. She indicated
5 that she had and expected that Ms. Clark would participate in the hearing. The court advised the
6 plaintiff that the defendant filed a motion for sanctions because she failed to appear for a duly noticed
7 deposition on August 26, 2009. The court inquired of the plaintiff why she failed to appear for her
8 deposition as scheduled. The plaintiff advised the court that she was told by Ms. Clark that the
9 deposition could not go forward because it would be in violation of some court order and that Ms. Clark
10 would file something with the court to clarify the matter. The court advised the plaintiff that Ms. Clark
11 filed no such motion and has not responded to repeated requests to address this issue.

12 On October 15, 2009, counsel for plaintiff filed a series of papers: (1) Motion for Extension to
13 File Response to Order to Show Cause (Dkt. #42); (2) Motion for Extension of Time to File Response
14 to Motion for Summary Judgment (Dkt. #43); (3) Motion to File Sealed Affidavits, for Protective
15 Order, and for Closed Hearing (Dkt. #44); (4) Affidavit of Charmaine L. Clark (Dkt. #45); and
16 (5) Motion for Reconsideration (Dkt. #46).

17 The motion to extend time to file a response to the order to show cause requests an extension of
18 ten days from a ruling on plaintiff's motion to file sealed affidavits to file a response to the order to
19 show cause. Ms. Clark states she cannot respond to the order to show cause without providing
20 information which needs to be filed under seal. The information she intends to provide to respond to
21 the order to show cause involves attorney-client privileged information explaining her failures to
22 respond to numerous court orders and to appear in court when required. Her motion for extension and
23 supporting affidavit asserts that she is being stalked by a mentally disturbed former client which
24 requires her to be absent from her office for her personal safety. She also avers that she needs to
25 disclose private medical information about herself that explains her absence.

26 Ms. Clark was not available for the October 20, 2009 hearing despite calling the courtroom
27 deputy at 7:00 a.m. to confirm her availability and provide a number at which she could be reached.
28 The court has serious concerns about whether Ms. Clark is capable of representing the plaintiff in this

1 action given her conduct to date and the nature of her most recent filings. However, the court will
 2 allow her to respond to the order to show cause and to file affidavits supporting her response under seal
 3 as requested. The court will also grant Ms. Clark's request for a protective order precluding the
 4 dissemination of the information provided in the sealed affidavits to anyone for any purpose unrelated
 5 to this litigation. However, Ms. Clark will be required to serve opposing counsel with her response to
 6 the order to show cause and any affidavit(s) supporting her response. The court will reserve judgment
 7 about whether to conduct a further sealed hearing until reviewing Ms. Clark's response.

8 **IT IS ORDERED:**

- 9 1. Attorney Clark's Motion for Extension of Time to File a Response to Order to Show
 10 Cause (Dkt. #42) is GRANTED to the extent Ms. Clark shall have until **October 30,**
 11 **2009** in which to file a response to the order to show cause.
- 12 2. Plaintiff's Motion for Extension of Time to File Response to Motion for Summary
 13 Judgment (Dkt. #43) is GRANTED, and plaintiff shall have until **November 10, 2009.**
- 14 3. Plaintiff's Motion to File Sealed Affidavits (Dkt. #44) is GRANTED to the extent the
 15 affidavits may be filed under seal, and a protective order is entered prohibiting the
 16 affidavits from being disclosed to any persons other than the court and opposing counsel.
 17 The court reserves judgment on whether or not to conduct a closed hearing.
- 18 4. Counsel for plaintiff shall have until **October 30, 2009** to show cause for her failure to
 19 appear at the October 20, 2009 hearing and failure to be available at the phone number
 20 she provided to participate telephonically.
- 21 5. The Clerk of the Court shall serve plaintiff with a copy of this order by mail at the
 22 address on file.

23 Dated this 21st day of October, 2009.

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 25 
 26 PEGGY A. LEEN
 27 UNITED STATES MAGISTRATE JUDGE
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